

IN UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

HARRY L. SAMUEL)
) C.A. No. 05-037- SLR
)
) JURY OF 12 DEMANDED
 Plaintiff,)
)
 v.)
)
 THOMAS CARROLL, ET. AL)
)
 Defendants,)

**ANSWER OF DEFENDANT FIRST CORRECTIONAL MEDICAL IN RESPONSE TO
PLAINTIFF'S FILINGS D.I. 2 and D.I. 34**

Defendant First Correctional Medical, hereinafter “FCM”, responds as follows to the allegations set forth in the plaintiff's Complaints:

1. Wrongful conduct by answering defendant is denied and it is denied that any conduct by defendant proximately caused any injuries, illnesses, or damages of any nature to the plaintiff.
2. Denied that answering defendant breached a dental or medical standard of care.
3. Denied that answering defendant was deliberately indifferent to a serious medical need or in any way violated the plaintiff's Eighth Amendment rights.

AFFIRMATIVE DEFENSES

4. Plaintiff fails to state a claim upon which relief may be granted.
5. Plaintiff fails to state a 42 U.S.C. §1983 claim against FCM.
6. The complaint fails to state a claim against defendant FCM upon which plaintiff may recover with respect to all claims for civil rights violations, including all claims under 42 U.S.C. §1983 and the 8th Amendment of the Constitution of the United States, as there is no vicarious

liability for civil rights claims.

7. The complaint fails to state a claim against FCM upon which plaintiff may recover with respect to all civil rights claims as FCM was not deliberately indifferent to a serious medical condition.
8. Plaintiff failed to properly plead a medical or dental malpractice action against FCM.
9. Plaintiff failed to file an affidavit of merit pursuant to 18 Del. C. § 6853.
10. FCM provided plaintiff with medical/dental care that was appropriate for his conditions and which met the applicable standards of care.

11. Plaintiff has failed to proffer any medical expert testimony or support for his claims of medical/dental negligence.

12. Plaintiff failed to exhaust his administrative remedies.
13. The Complaint fails to state a claim for punitive damages upon which plaintiff may recover.

WHEREFORE, the defendant FCM asks that the Complaint against it be dismissed with prejudice and all costs be assessed against the plaintiff.

McCULLOUGH & McKENTY, P.A.

/s/ Dana Spring Monzo
Dana Spring Monzo
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Attorney for Defendant First Correctional Medical

Dated: June 29, 2006

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CERTIFICATE OF SERVICE

I, DANA SPRING MONZO, hereby certify that this date attached *Answer* was served to the following:

Via Electronic Service
Kevin J. Connors
1220 N. Market Street, Suite 500
P.O. Box 8888
Wilmington, DE 19899

**Ophelia M. Waters
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Via U.S. Mail
Harry L. Samuel
SBI# 201360
Delaware Correctional Center
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McCULLOUGH & McKENTY, P.A.

/s/ Dana Spring Monzo

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